

0100627042

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May 16, 1995

RECORDATION NO. 11396-F
FILED 1425

MAY 16 1995 - 12 05 PM

INTERSTATE COMMERCE COMMISSION

LICENSING BRANCH

MAY 16 12 01 PM '95

RECEIVED
OFFICE OF THE
SECRETARY

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are four (4) copies of Lease Amendment No. 1, dated as of May 15, 1995, a secondary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The enclosed document relates to Lease of Railroad Equipment filed with the Commission under Recordation Number 11396.

The names and addresses of the parties to the enclosed document are:

Lessee: The Dow Chemical Company
Dow Center
Midland, Michigan 48674

Lessor: BA Leasing & Capital Corporation
4 Embarcadero Center, 12th Floor
San Francisco, California 94111

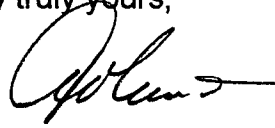
A description of the railroad equipment covered by the enclosed document is attached to the Lease of Railroad Equipment as originally filed.

Mr. Vernon A. Williams
May 16, 1995
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return three stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Alvord", with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/bg
Enclosures



Interstate Commerce Commission
Washington, D.C. 20423-0001

5/16/95

Office Of The Secretary

Robert W. Alvord
Alvord=And Alvord
918 Sixteenth Street, NW., Ste. 200
Washington, DC., 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/16/95 at 12:05PM , and assigned recordation number(s). 11396-F.

Sincerely yours,

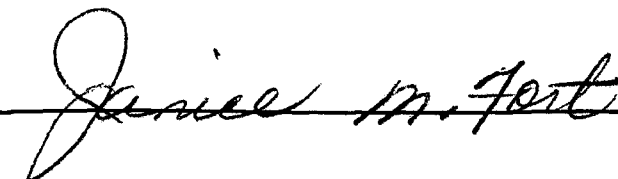

Vernon A. Williams
Secretary

Enclosure(s)

(0100627042)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



11396-F

LEASE AMENDMENT NO. 1

This LEASE AMENDMENT NO. 1 (the "Amendment") dated as of May 15, 1995 to the LEASE OF RAILROAD EQUIPMENT dated as of January 14, 1980 recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on January 21, 1980, at 1425 .m., recordation number 11396-B ("Lease") between The Dow Chemical Company, as Lessee and BA Leasing & Capital Corporation (as assignee of Security Pacific Equipment Leasing, Inc.), as Lessor.

WHEREAS, Lessor has paid the full aggregate purchase price for all the Equipment as required by Article 4 of the Conditional Sale Agreement dated as of January 14, 1980 between it and each of ACF Industries, Incorporated and Richmond Tank Car Company;

WHEREAS, Lessee, pursuant to Section 13(b) of the Lease, has a right of first refusal with respect to the Equipment; and

WHEREAS, Lessee and Lessor desire to amend the Lease to eliminate Lessee's right of first refusal with respect to the Equipment and to grant to Lessee a purchase option with respect to the Equipment;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is HEREBY AGREED that the Lease is hereby amended, effective as of the date first set forth above, as follows:

SECTION 1. Definitions. Capitalized terms used herein shall have the respective meanings assigned thereto in the Lease.

SECTION 2. Amendment to the Lease. (a) Section 13(b) of the Lease is hereby deleted and is restated in full as follows:

" (b) If no Event of Default exists, Lessee may, by notice delivered in writing to Lessor not more than one year and not less than 120 days prior to the end of the original term or the renewal term under the Lease, elect to purchase all but not less than all of the Units for a cash price equal to the then-current Fair Market Value for the Units, determined as follows:

(i) "Fair Market Value" as used herein means the amount that would be obtained in an arm's-length

transaction between a willing and informed seller and a willing and informed buyer, with neither under compulsion to buy or sell and being knowledgeable of relevant facts as of the proposed date of sale.

- (ii) If the Lessor and Lessee cannot agree on the then-current Fair Market Value prior to 75 days before the expiration of the original term or the renewal term of the Lease, as the case may be, either party may file with the American Arbitration Association (AAA), or its successor, a request for a list of independent appraisers, qualified in accordance with the Commercial Rules of Arbitration.
- (iii) A list of qualified appraisers will be provided to the parties within ten (10) days of filing. Lessor and Lessee will independently rank the listed appraisers in order of preference. The highest ranking appraiser of the combined lists will be the selected appraiser ("Appraiser") and perform the appraisal within 30 days of such appointment. The conclusions will be conclusive and binding on both Lessor and Lessee. The cost for the filing and appraisal process shall be borne by both parties equally.
- (iv) If either the Lessor or Lessee fail to respond or rank the list of appraisers as provided by the AAA, it will be assumed that they concur with the selection made by the party responding. The Appraiser will be instructed to perform the appraisal consistent with the terms and conditions contained in this Lease and will assume that the Units are in the condition required by Section 14 hereof, are free and clear of all

liens, claims and encumbrances and are in compliance with all current American Association of Railroads and Federal Railway Administration requirements so that they can be placed into immediate interchange service."

(b) Section 13 of the Lease is hereby supplemented as follows:

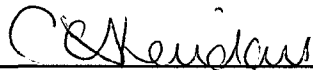
"(c) If the date of the purchase referred to above is not a business day, the purchase price otherwise payable on such date shall be payable on the next succeeding business day, as such term is defined in Section 3(b) of this Lease.

(d) Lessee shall pay all Impositions which may be levied, charged or imposed on the Lessor as a result of or in connection with the sale of the Equipment pursuant to Section 13(b), except for payment of any Impositions in connection with any federal state or local taxes based on or measured by the net income of Lessor."

SECTION 3. Miscellaneous. This shall be construed as an amendment and as supplemental to the Lease and shall form a part thereof, and, except as amended and supplemented herein, the Lease is hereby incorporated by reference herein and is hereby ratified, approved and confirmed. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN; PROVIDED, HOWEVER, THAT THE PARTIES SHALL BE ENTITLED TO ALL RIGHTS CONFERRED BY 49 U.S.C. § 11303. This Amendment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered is an original, but all such counterparts shall together constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this LEASE AMENDMENT NO. 1 to be executed as of the date first above written.

THE DOW CHEMICAL COMPANY

By: 

SMH

Carolyn A. Sheridan
Authorized Representative

BA LEASING & CAPITAL CORPORATION

By: 

Name: Virgil A. Starks
Title: Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF San Francisco)

On May 15, 1995 before me, Susan A. Scaletti

DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Virgil A. Stites, Vice President of Balmis & Capital Corporation
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Susan A. Scaletti (SEAL)
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT Lease Amendment Dow Chemical

DATE OF DOCUMENT May 15, 1995 NUMBER OF PAGES 4

SIGNER(S) OTHER THAN NAMED ABOVE Carolyn A. Sheridan

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On this 15th day of May, 1995, before me, the undersigned, a Notary Public in and for said County, personally appeared Virgil A. Stiles, known to me (or proved to me on the basis of satisfactory evidence) to be the Vice President of BA Leasing & Capital Corporation, the Corporation that executed the within and foregoing instrument, and known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same pursuant to its By-laws or a resolution of its board of Directors, and was his free act and deed.

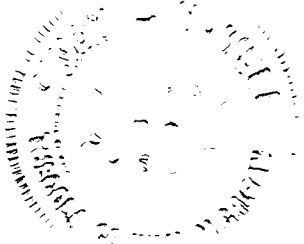
WITNESS my hand and official seal.

Notary Public

STATE OF MICHIGAN)
) ss.
COUNTY OF MIDLAND)

On this 12th day of May, 1995, before me, the undersigned, a Notary Public in and for said County, personally appeared Carolyn A. Sheridan, known to me (or proved to me on the basis of satisfactory evidence) to be the Authorized Representative of The Dow Chemical Company, the Corporation that executed the within and foregoing instrument, and known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same pursuant to its By-laws or a resolution of its board of Directors, and was his free act and deed.

WITNESS my hand and official seal.



Cindy L. Howell
Notary Public
CINDY L. HOWELL

Notary Public, Tuscola County, Michigan
Acting in Midland County, Michigan
My Commission Expires April 23, 1997